

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE: §
§
3443 ZEN GARDEN, LP. § CASE NO. 20-10410-HCM
§
§
Debtor. §

CURE CLAIM OBJECTION OF AUSTIN GLASS & MIRROR, INC., ACM SERVICES,
LLC, SUMMER LEGACY, LLC, KOETTER FIRE PROTECTION OF AUSTIN, LLC,
CAPITAL INDUSTRIES, LLC, HILL COUNTRY ELECTRIC SUPPLY, LP, LYLE
AMERICA, INC. D/B/A GLASS.COM OF ILLINOIS, FERGUSON ENTERPRISES,
LLC, AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC. D/B/A ABC
SUPPLY CO., INC., AND TEXAS AIR, LLC

[Relates to Docket No. 203]

COME NOW Austin Glass & Mirror, Inc. ("Austin Glass"), ACM Services, LLC ("ACM"), Summer Legacy, LLC ("Summer Legacy"), Koetter Fire Protection of Austin, LLC ("Koetter"), Capital Industries, LLC ("Capital Industries"), Hill Country Electric Supply, LP ("HCES"), Lyle America, Inc. d/b/a Glass.com of Illinois ("Glass.com"), Ferguson Enterprises, LLC ("Ferguson"), American Builders & Contractors Supply Co., Inc. d/b/a ABC Supply Co., Inc. ("ABC"), and Texas Air Industries, LLC ("Texas Air") (collectively, the "Objecting Parties") and file this Cure Claim Objection. In support thereof, the Objecting Parties respectfully state as follows:

1. Austin Glass has an agreement signed by the Debtor and Panache Development & Construction, Inc ("Panache"). This agreement is not identified on the Notice of Proposed Cure Costs. The amount outstanding and payable to satisfy the monetary requirements of section 365(b)(1)(A) if this agreement is executory and proposed to be assumed by the Trustee is \$686,374.14. Austin Glass reserves all rights and positions regarding any proposed assumption of its agreement

2. ACM has four agreements signed by the Debtor and Panache. The first agreement covers Phase 1 Central Plant Chillers. The second agreement covers electrical work in connection with buildings F, H and J “shell building.” The third agreement covers Phase 4 Power Distribution. The fourth agreement covers electrical work related to the Work Well Co-Working Space. These agreements are not identified on the Notice of Proposed Cure Costs. The amount outstanding and payable to satisfy the monetary requirements of section 365(b)(1)(A) if these agreements are executory and proposed to be assumed by the Trustee is \$401,520.90.

3. Summer Legacy has five agreements signed by the Debtor and Panache. These five agreements cover work for roofing, steel erection, framing, insulation, and drywall, exterior metal paneling, and painting. These agreements are not identified on the Notice of Proposed Cure Costs. The amount outstanding and payable to satisfy the monetary requirements of section 365(b)(1)(A) if these agreements are executory and proposed to be assumed by the Trustee is \$932,577.90

4. Additionally, in adversary proceeding number 20-1048, Austin Glass, ACM, Summer Legacy, Koetter, Capital Industries, HCES, Glass.com, Ferguson, ABC, and Texas Air have each asserted that they have a direct contractual relationship with the Debtor recognizable under Texas Property Code § 53.026. These agreements are not identified on the Notice of Proposed Cure Costs. The following amounts outstanding and payable to satisfy the monetary requirements of section 365(b)(1)(A) if these agreements are executory and proposed to be assumed by the Trustee are:

- a. Austin Glass - \$686,374.14;
- b. ACM - \$401,520.90;
- c. Summer Legacy - \$932,577.90;
- d. Koetter - \$341,688.09;

- e. Capital Industries - \$600,224.24;
- f. HCES - \$84,751.82;
- g. Glass.com - \$442,600;
- h. Ferguson - \$88,013.52;
- i. ABC - \$142,840.19; and
- j. Texas Air - \$67,007.00.

5. Based upon the foregoing, Austin Glass, ACM, Summer Legacy, Koetter, Capital Industries, HCES, Glass.com, Ferguson, ABC, and Texas Air each respectively object to the proposed cure amounts submitted by the Trustee in Docket No. 203, and respectfully request that the Bankruptcy Court condition any proposed assumption of their respective agreements with the Debtor upon cure of the above identified monetary defaults. The Objecting Parties reserve all other rights and positions as to any proposed assumption, including the assignability of their respective contracts and all issues relating to adequate assurance of future performance under such contracts.

WHEREFORE, PREMISES CONSIDERED, Austin Glass, ACM, Summer Legacy, Koetter, Capital Industries, HCES, Glass.com, Ferguson, ABC, and Texas Air each:

- (a) respectively object to the proposed cure amounts and respectfully request that the Bankruptcy Court condition any proposed assumption of their respective agreements with the Debtor upon cure of the above identified monetary defaults; and
- (b) request such other and further relief to which they may be justly entitled.

Dated: September 18, 2020

Respectfully submitted,

Kell C. Mercer, PC
1602 E. Cesar Chavez Street
Austin, Texas 78702
Telephone: (512) 627-3512
Facsimile: (512) 597-0767
kell.mercer@mercer-law-pc.com

By: /s/ Kell C. Mercer
Kell C. Mercer
Texas Bar No. 24007668

COUNSEL FOR COUNSEL FOR AUSTIN GLASS & MIRROR, INC., ACM SERVICES, LLC, KOETTER FIRE PROTECTION OF AUSTIN, LLC, CAPITAL INDUSTRIES, LLC, HILL COUNTRY ELECTRIC SUPPLY, LP, LYLE AMERICA, INC. D/B/A GLASS.COM OF ILLINOIS, SUMMER LEGACY, LLC, AND TEXAS AIR INDUSTRIES, LLC

-AND-

/s/ Misti L. Beanland
MISTI L. BEANLAND
STATE BAR NO. 00798057
MATTHEWS|SHIELS|KNOTT|EDEN|DAVIS|BEANLAND
LLP
8131 LBJ FREEWAY, SUITE 700, DALLAS, TX 75251
972.234.3400 TELEPHONE
BEANLAND@mssattorneys.com EMAIL

COUNSEL FOR FERGUSON ENTERPRISES, LLC

-AND-

ANDREWS MYERS, P.C.

/s/ Lisa M. Norman
LISA M. NORMAN
Federal Bar No. 613906
Texas Bar No. 24037190
1885 St. James Place, 15th Floor
Houston, Texas 77056
713-850-4200—Telephone
713-850-4211—Facsimile
Lnorman@andrewsmyers.com

ATTORNEYS FOR AMERICAN BUILDERS &
CONTRACTORS SUPPLY CO., INC. D/B/A ABC
SUPPLY CO., INC.

CERTIFICATE OF SERVICE

I certify that on September 18, 2020, a true and correct copy of the forgoing was served on the following parties at the indicated email addresses:

Robert L. Barrows on behalf of Creditor H&H Crane Services, Inc. dba Texas Crane Service
rbarrows@wdblaw.com, bchapa@wdblaw.com, PACERNotice@gmail.com

Misti Lachelle Beanland on behalf of Creditor Ferguson Enterprises, LLC
beanland@mssattorneys.com

Christopher G Burwell on behalf of Creditor Wembley Metal Buildings, LLC
cburwell@baileyandbaileypc.com

Annmarie Antoniette Chiarello on behalf of Interested Party Rob Roy Parnell, the Receiver
achiarello@winstead.com, dgalindo@winstead.com

Bruce J Duke on behalf of Plaintiff Absolute Energy Resources, Inc.
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Absolute Environmental Waste Management, Inc
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Dan White Family Trust
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Eco Industrial Business Park Inc.
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Lincoln 1861, Inc.
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Lot 11 GP Ltd
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Lot 11 Limited Partnership
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Symmetry Asset Management, Inc.
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke on behalf of Plaintiff Daniel White
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke, on behalf of Interested Party Lincoln 1861, Inc.
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Bruce J Duke, on behalf of Interested Party Daniel White
brucedukeesq@gmail.com, brucedukeesq@gmail.com

Barbara Lee Emerson on behalf of Creditor Schindler Elevator Corporation
bemerson@bellingersuberg.com, rmoors@bellingersuberg.com

Martyn B. Hill on behalf of Creditor Lone Star Materials, Inc.
mbh@pdhlaw.com, eservice@pdhlaw.com; mah@pdhlaw.com; sserry@pdhlaw.com

B. Russell Horton on behalf of Creditor Panache Development & Construction, Inc.
rhorton@gbkh.com, kseabolt@gbkh.com

Paul H. Jordan on behalf of Creditor Hill Country Electric Supply, L.P.
pjordon@sneedyvine.com, gtwnfilings@sneedyvine.com

Paul H. Jordan on behalf of Creditor Koetter Fire Protection of Austin, LLC
pjordon@sneedyvine.com, gtwnfilings@sneedyvine.com

Paul H. Jordan on behalf of Creditor Texas Air, LLC
pjordon@sneedyvine.com, gtwnfilings@sneedyvine.com

Scott D. Lawrence on behalf of Trustee Gregory S. Milligan
scott.lawrence@wickphillips.com, brenda.ramirez@wickphillips.com

Tara LeDay on behalf of Creditor The County of Hays, Texas
tleday@ecf.courtdrive.com; pbowers@mvbalaw.com; vcovington@mvbalaw.com; bankruptcy@m
mvbalaw.com; alocklin@mvbalaw.com

Lisa M. Norman on behalf of Creditor American Builders and Contractors Supply Co., Inc. d/b/a ABC Supply Co., Inc.

lnorman@andrewsmyers.com, kdubose@andrewsmyers.com

Stephanie L O'Rourke on behalf of Creditor Capital Pumping, LP

sorourke@cokinoslaw.com, sdavis@cokinoslaw.com; ltafolla@cokinoslaw.com

Jason M. Rudd on behalf of Trustee Gregory S. Milligan

jason.rudd@wickphillips.com, brenda.ramirez@wickphillips.com

Danielle Nicole Rushing on behalf of Creditor Dan White

drushing@dykema.com, lvazquez@dykema.com; docketsat@dykema.com

Danielle Nicole Rushing on behalf of Interested Party Lincoln 1861, Inc.

drushing@dykema.com, lvazquez@dykema.com; docketsat@dykema.com

Danielle Nicole Rushing on behalf of Interested Party Daniel White

drushing@dykema.com, lvazquez@dykema.com; docketsat@dykema.com

Thomas C. Scannell on behalf of Creditor Romspen Mortgage Limited Partnership

tscannell@foley.com, acordero@foley.com

Jason A. Starks on behalf of Creditor Travis County

bkecf@traviscountytx.gov

Jeffrey M. Tillotson on behalf of Creditor Dan White

jtillotson@tillotsonlaw.com, swade@tillotsonlaw.com; keith@tillotsonlaw.com

United States Trustee - AU12

ustpregion07.au.ecf@usdoj.gov

Richard James Wallace, III on behalf of Creditor Equipmentshare.com, Inc.

richard.wallace@solidcounsel.com

Deborah D. Williamson on behalf of Creditor Dan White Family Trust

dwilliamson@dykema.com, mlongoria@dykema.com; docketsat@dykema.com

Deborah D. Williamson on behalf of Creditor Dan White

dwilliamson@dykema.com, mlongoria@dykema.com; docketsat@dykema.com

/s/ Kell C. Mercer

Kell C. Mercer